16

Office - Supreme Court,
FILED
NOV 20 1952
HAROLD B. WILLEY, CL

IN THE

# Supreme Court of the United States

**OCTOBER TERM, 1952**

**No. 385**

WESTERN NEW YORK WATER COMPANY and NEW YORK WATER SERVICE CORPORATION,

*Petitioners,*

against

ERIE COUNTY WATER AUTHORITY,

*Respondent.*

**On Petition for a Writ of Certiorari to the Court of Appeals of the State of New York**

## REPLY BRIEF OF PETITIONERS

REID S. MOULE and JESSE CLIMENKO,
*Attorneys for Petitioners.*

REID S. MOULE,
Buffalo, N. Y.

JULIUS L. SACKMAN,
New York, N. Y.
*of Counsel.*

1899

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1952

---

No. 385

---

WESTERN NEW YORK WATER COMPANY and NEW YORK WATER SERVICE CORPORATION,

Petitioners,

against

ERIE COUNTY WATER AUTHORITY,

Respondent.

---

**On Petition for a Writ of Certiorari to the Court of Appeals of the State of New York**

---

## REPLY BRIEF OF PETITIONERS

No reply brief would be necessary herein except for the fact that the respondent has sought to confuse the issue on this petition by repeated reference to Olmsted's subsequent application to the Appellate Division for an investigation and/or a clean bill of health and the said Court's refusal to entertain such application.

Olmsted's application to the Appellate Division has no bearing on the issue herein because:

(1) It was a belated, last-minute, unilateral effort on the part of Olmsted to create a straw man which had the characteristic vulnerability of such creations. The proceeding was instituted not only after the decision of the Court of Appeals which is here sought to be reviewed had been

rendered, but after a certified transcript of the record herein had been filed with this Court.

(2) The Appellate Division refused to entertain Olmsted's application and made no findings relative to the facts herein. Its order stated: "It is hereby Ordered, That said motion be, and the same hereby is denied." The said order was not a determination on the merits, but rather a disposition in the nature of a dismissal of the application. Specifically, it was a refusal to grant the requested clean bill of health. (See Appendix I hereto.)

Respondent states, further, that *all* of the claims, charges, assertions and proofs of the petitioners herein were presented to the Appellate Division on the aforesaid application. This is completely untrue. *No* charges were filed with the Appellate Division; no hearings were held by the Appellate Division.

(3) The attempt by Olmsted to invoke the jurisdiction of the Appellate Division relative to a matter of professional misconduct is irrelevant to the issue herein. The petitioners herein seek the disqualification of Olmsted in this particular cause, a matter which does not involve jurisdiction relative to professional misconduct.

Petitioners herein do not dispute the holding of the Court of Appeals relative to the question of jurisdiction in matters affecting professional misconduct, but it is claimed, and has been claimed throughout this proceeding, that the issue herein does not involve the invoking of the disciplinary jurisdiction of the Court. The issue herein, plainly and simply stated, is: "Was the refusal by the New York Court to disqualify the attorney from appearing in the cause a denial of due process?" This is the question presented, as set forth in the petition herein at page five, and this is the question presented, as set forth in the respondent's brief herein at page four. There is, at least, complete agreement upon the essential issue presented in this case.

The decision of the Court of Appeals relative to jurisdiction in matters of professional misconduct is obviously not responsive to such issue or to the relief sought herein, and is, consequently, completely inadequate and may not be availed of to defeat the presentation of the conceded federal question for review by this Court.

## CONCLUSION

**The instant petition presents a substantial and conceded Federal Question that warrants and requires review. For the reasons stated in the petition, in our main brief, and in this reply, the petition for certiorari should be granted.**

Respectfully submitted,

REID S. MOULE and JESSE CLIMENKO,
Attorneys for Petitioners.

REID S. MOULE,
Buffalo, N. Y.

JULIUS L. SACKMAN,
New York, N. Y.
of Counsel.

## APPENDIX I

### Prayer for Relief in Application of Laurence J. Olmsted to Appellate Division, Fourth Department

Wherefore your petitioner prays for an order and adjudication of this Court as follows:

(1) That no grounds exist in the opinion of this Court warranting an investigation into the said alleged charges of professional misconduct and alleged conduct prejudicial to the administration of justice, alleged to have been committed by the petitioner herein.

(2) In the event that this Court finds such investigation warranted that it order and direct that charges in writing in the formal manner prescribed by law be prepared and presented as directed by this Court.

(3) That thereafter this Court make such investigation of said charges and the answer of the petitioner thereto, together with such further orders and directions of the Court as it may feel to be necessary and proper in the premises.